IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3152 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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GUJ. STATE CO. OP. AGRI & RURAL DEV. BANK LIMITED - Petitioner(s)

Versus

M.V. VAID & 3 - Respondent(s)

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Appearance :

MS LILU K BHAYA for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 2, 4,
MR DD VYAS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/01/2006

ORAL JUDGMENT

1. In the present petition, the petitioner – the Gujarat State Co-operative Agricultural and Rural

Development Bank Limited has challenged the order dated 28-08-1995 passed by the Deputy Secretary (Appeals), Revenue Department, Government of Gujarat.

2. The short facts leading to the petition are that; the petitioner – bank loaned a sum of Rs. 15,000/- (Rupees Fifteen Thousand only) to Respondent No. 4 for purchase of Tractor on 16-04-1964. For securing loan, respondent No. 4 mortgaged 148 acres of land held by him. Since respondent No. 4 could not repay the debt, recovery proceedings were initiated by the petitioner. Recovery certificate was issued. The same was sought to be executed by auctioning property held by respondent no.4. Auction was held on 18-12-1991. Respondent no.3 claiming to be owner of 5 Acres of land earlier held by respondent no.4, challenged the auction proceedings before the Deputy Secretary. The Deputy Secretary allowed the application and by impugned order dated 28-08-1995, was pleased to direct the petitioner to refund the amount received by the Government and restart the auction proceedings bearing in mind the observations made in the order.

2.1. It can be noted at this stage, that it appears

that initially since there was no response to the auction proceedings, a part of the land held by respondent no.4 was transferred to the State Government, in lieu of the payment of Rs. 19,000/- (Rupees Nineteen Thousand only) to the petitioner – Bank. Despite the payment of Rs.19,000/- (Rupees Nineteen thousand only), substantial amount remained outstanding against respondent No.4. Learned advocate Ms. Bhaya for the petitioner – Bank states that respondent no.4 subsequently paid up the unpaid amount also.

3. In the impugned order, the Deputy Secretary found that respondent no.3 had purchased 5 Acres of land out of the land held by respondent no.4 by registered sale-deed dated 04-04-1966 that; the name of respondent no.3 was also entered in the revenue record. No objection was raised by the bank to such sale. In the auction notification also out of block of 34 acres and 25 gunthas, only 29 acres and 25 gunthas was shown to be available meaning, the land sold by respondent no.4 to respondent no.3 was excluded. The Deputy Secretary, therefore, also came to the conclusion that in the facts of the present case, the recovery could have been effected by selling other lands held by respondent no.4.

On these grounds, the Deputy Secretary was pleased to set aside the auction proceedings. Eventually the effect of order, so far as respondent no.3 is concerned is that his revision application was allowed, his land was saved and so far as remaining land is concerned, the same was required to be re-auctioned for which purpose the petitioner was directed to refund the amount received from the Government.

4. On account of passage of time and intervening circumstances, this Court would have to take pragmatic view of the entire issue. Firstly, the dues of the petitioner – bank have been satisfied, of course considering the amount of Rs. 19,000/- (Rupees Nineteen thousand only) paid by the government. Respondent no.3 is satisfied by the order passed by the Deputy Secretary, since the land is kept out of the auction proceedings. The government is holding the land for which it has paid total Rs. 19,000/- (Rupees nineteen thousand only) to the petitioner – bank. For variety of reasons, I do not find it appropriate to upset this equilibrium. Firstly respondent no.3 can be kept out of the debate by providing that his land will not be subject to any recovery proceedings as held by the Deputy Secretary. To

that extent, the impugned order is required to be and is hereby upheld. I come to the above conclusion on the grounds that:

(i) The petitioner – bank has received its full dues;

(ii) Respondent no.3 had purchased the land in question way back in the year 1966;

(iii) That the petitioner – bank had not raised any objection about the sale for years together;

(iv) The Deputy Secretary has also held that it is not clear whether land purchased by respondent no.3 was part of the auction proceedings.

5. Thus at this distant point of time I do not find it equitable to bring about a result by which the land of respondent no.3 would be subject-matter of recovery proceedings for repayment of dues of respondent no.4.

6. Insofar as the impugned order directing the petitioner to refund the amount received from the government is concerned, I find that the same cannot be upheld as large area of the land is vested in the government for which the government had paid Rs. 19,000/-

(Rupees nineteen thousand only) at the relevant time. This payment along with the subsequent payment takes care of the dues of the petitioner. To restart the auction proceedings for short fall of Rs. 19,000/- (Rupees nineteen thousand only), would be in my view an unnecessary formality. Respondent no.4 has not shown any interest in the litigation. The Government thus occupies the land, price of the which would have gone up several times, since its transfer. No useful purpose or interest of exchequer would be served by permitting the order of the Deputy Collector to be operated in this regard.

7. In the result, the petition is allowed in part. In so far as question of 5 acres of land held by respondent no.3 is concerned, the direction issued by Deputy Secretary is confirmed. Insofar as the refund of amount from the petitioner to the government is concerned, the same is set aside. The necessary corollary thereof would be that the land barring 5 acres held by respondent no.3 which was sought to be auctioned by the petitioner – bank, which has been transferred to the Government will remain with the Government for its use and disposal in accordance with law.

8. In the result the petition is disposed of with above directions and allowing the same to the limited extent. Rule made absolute. No order as to costs.

[AKIL KURESHI, J.]

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